IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

Bail Appl..No. 5609 of 2007()

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[CRIME NO.318/2007 OF PARAVUR POLICE STATION]

PETITIONERS/ACCUSED 1 AND 2

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1. SREEJITH, S/O CHANDRACHUDAN PILLAI,
AGED 19, RESIDING AT THEKEVEETIL THODIYAL,
THEKUMBHAGAM, PARAVUR, KOLLAM.

2. UMMESH, S/O.MOHANA PILLAI, AGED 19,
RESIDING AT THEKEVEETIL THODIYAL,
THEKUMBHAGAM, PARAVUR, KOLLAM.

BY ADV. SRI.HARISH GOPINATH

RESPONDENT: COMPLAINANT

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STATE OF KERALA, REPRESENTED BY
SUB INSPECTOR OF POLICE, PARAVUR POLICE STATION,
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J.**

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B.A.No.5609 of 2007

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Dated this the 19th day of September 2007

**O R D E R**

Application for anticipatory bail. The petitioners are accused 1 and 2. Two named accused as well as two to three other persons are arrayed as accused in the F.I.R. The alleged incident took place on 15/7/2007 at about 8.30 p.m. The crux of the allegations is that the accused persons came in search of one Mukesh, a friend of the de facto complainant, who was involved in an earlier incident with the de facto complainant. The de facto complainant deterred them. This allegedly infuriated the petitioners who attacked the de facto complainant. They were allegedly armed with iron rods. Crime has been registered inter alia under Section 308 read with 149 I.P.C. The petitioners apprehend imminent arrest. One of the co-accused, not named in the F.I.R, has subsequently been arrested and enlarged on regular bail, it is submitted.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The incident did not at

all take place in the manner alleged by the prosecution. Apprehending that the petitioners might initiate criminal action against the de facto complainant, the de facto complainant, as a counter blast, has chosen to make reckless allegations against the petitioners. At any rate, the inclusion of the allegation under Section 308 I.P.C is totally unjustified. That allegation has been raised with the transparent intention of vexing and harassing the petitioners. There are no circumstances justifying the invocation of the allegation under Section 308 I.P.C. Such allegation has been raised to ensure that the petitioners are vexed and harassed and will not be able to seek bail from the learned Magistrate. In these circumstances, it is prayed that the petitioners may be granted anticipatory bail.

3. The learned Public Prosecutor submits that there is no merit whatsoever in the contention that the incident did not take place in the manner alleged by the prosecution. The learned Public Prosecutor was requested to pointedly explain why the allegation under Section 308 I.P.C has been included. The learned Public Prosecutor has read over the wound certificate to me. An injury is suffered on the head. No dimensions of the

injury are noted at all. In the absence of any serious injury and in the absence of any specific allegation to attract the offence punishable under Section 308 I.P.C, the learned Public Prosecutor submits that the bail application to be filed by the petitioners can be considered reckoning that no allegation under Section 308 I.P.C is raised at all.

4. I am satisfied, in these circumstances, that this bail application can be dismissed subject to appropriate observations. It shall be open to the petitioners to surrender before the investigating officer or the learned Magistrate having jurisdiction within ten days and seek regular bail. The learned Magistrate shall then consider the application for bail to be filed by the petitioners on their appearance/surrender before the learned Magistrate on merits, in accordance with law and expeditiously reckoning that no allegation under Section 308 I.P.C is at all raised.

**(R.BASANT, JUDGE)**

jsr

// True Copy// PA to Judge

**R.BASANT, J.**

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007